

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>MEDICAL SUPPLY CHAIN, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION</b>
<b>v.</b>	)	
	)	<b>No. 05-2299-CM</b>
<b>NEOFORMA, INC., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

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**ORDER**

Pending before the court are Defendants' Motion for Attorney's Fees (Doc. 85) and Defendants' Accounting of Attorneys' Fees and Costs (Doc. 100).

**I. Background**

On March 9, 2005, plaintiff Medical Supply Chain, Inc. ("Medical Supply") filed the above-captioned case in the United States District Court for the Western District of Missouri, case number 05-2010-CV-W-ODS. Plaintiff brought suit against Neoforma, Inc.; Robert J. Zollars; Volunteer Hospital Association, Inc. ("VHA"); Curt Nonomaque; University Healthsystem Consortium; Robert J. Baker; US Bancorp NA; U.S. Bank National Association; Jerry A. Grundhofer; Andrew Cesare;<sup>1</sup> Piper Jaffray Companies; Andrew S. Duff; Shughart Thomson & Kilroy, P.C.;<sup>2</sup> and Novation, LLC. Plaintiff's 115 page complaint alleges sixteen counts including claims for price restraint under the Sherman Act, restraint of trade and monopolization under both federal and Missouri law, conspiracy,

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<sup>1</sup> Throughout the docket sheet, this defendant's last name was spelled numerous different ways. The court will use "Cesare," the spelling most often used by defendant's counsel.

<sup>2</sup> Plaintiff's complaint names "Shughart Thomson & Kilroy Watkins Boulware, P.C." but the law firm's correct name is "Shughart Thomson & Kilroy, P.C.".

tortious interference with contract or business expectancy, breach of contract, breach of fiduciary duty, fraud, prima facie tort, and claims under RICO and the USA PATRIOT Act.

The Western District of Missouri court transferred the case to this court on July 14, 2005. On March 7, 2006, this court dismissed plaintiff's case after finding that each of plaintiff's federal claims failed to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6) and declining to retain supplemental jurisdiction over plaintiff's state law claims. The court also found that claim preclusion barred several of plaintiff's claims. Furthermore, the court held that plaintiff's 115 page complaint violates Federal Rules of Civil Procedure 8(a) and 8(e)(1), and granted sanctions in the form of attorney fees and costs to defendants pursuant to Federal Rule of Civil Procedure 11(b) and 28 U.S.C. § 1927. At issue here is the reasonable amount of defendants' attorney fees and costs.

## **II. Standard**

The court follows a two-step process to determine an award of reasonable attorney fees and costs. The initial estimate is calculated by multiplying the number of hours reasonably expended by a reasonable hourly fee, resulting in the "lodestar" amount. *Blum v. Stenson*, 465 U.S. 886, 888 (1984); *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The court may then adjust upward or downward from the lodestar as necessary. *Blum*, 465 U.S. at 888.

The party moving for attorney fees "bears the burden of . . . documenting the appropriate hours expended and the hourly rate." *Case v. Unified Sch. Dist. No. 233, Johnson County, Kan.*, 157 F.3d 1243, 1249 (10<sup>th</sup> Cir. 1998). To satisfy its burden, therefore, the party must submit "meticulous, contemporaneous time records that reveal, for each lawyer for whom fees are sought, all hours for which compensation is requested and how those hours were allotted to specific tasks." *Id.* at 1250

(citing *Ramos v. Lamm*, 713 F.2d 546, 553 (10<sup>th</sup> Cir. 1983)). “The prevailing party must make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary.” *Robinson v. City of Edmond*, 160 F.3d 1275, 1280 (10<sup>th</sup> Cir. 1998). The court will reduce the hours claimed if the attorneys’ records are inadequate or fail to precisely document the time necessary to complete specific tasks. *Hensley*, 461 U.S. at 433-34; *Case*, 157 F.3d at 1250.

### **III. Analysis**

#### **A. Defendants US Bancorp NA; U.S. Bank National Association; Jerry A. Grundhofer; Andrew Cesare; Piper Jaffray Companies; and Andrew S. Duff’s Motion for Attorney Fees (Doc. 85)**

Defendants US Bancorp NA, U.S. Bank National Association, Jerry A. Grundhofer, Andrew Cesare, Piper Jaffray Companies, and Andrew S. Duff request \$59,856.41 in attorney fees, which they assert represent the work done and expenses incurred in responding to plaintiff’s March 9, 2005 complaint and obtaining dismissal of this case. In support of this request, the law firm of Shughart Thomson & Kilroy in Kansas City, Missouri submitted to the court numerous bills for legal services rendered. The bills were divided between two sets of clients: (1) US Bancorp NA, U.S. Bank National Association, Jerry A. Grundhofer, and Andrew Cesare; and (2) Piper Jaffray Companies and Andrew S. Duff. Plaintiff does not oppose the reasonableness of these fees.

The court’s examination of the two sets of bills revealed numerous errors and inconsistencies. First, each set of clients was billed for what appears to be identical work. For example, the first entry for each bill states that Mark Olthoff devoted .3 hours to “analysis of new complaint,” for which each client was billed \$85.50 (\$285 an hour multiplied by .3 hours). Neither the bills themselves nor Mr. Olthoff’s declaration address this issue. Second, although Mr. Olthoff’s declaration, which was signed under penalty of perjury, lists the hourly rates for each attorney who worked on the case, the hourly rates actually billed to the clients are inflated for all but one attorney by as much as seventeen

percent. The court reiterates that defendants bear the burden of accurately demonstrating, through meticulous records, the hours expended and the hourly rates charged for each attorney. *Case*, 157 F.3d at 1249-50.

For the above-mentioned reasons, the court finds that these defendants have not met their burden. As such, the court denies defendants' motion for attorney fees without prejudice with leave to re-file within five (5) days of this Order. Failure to sufficiently address each of the above-mentioned issues will result in the court denying defendants' motion.

**B. Defendants Novation, LLC; VHA Inc.; University Healthsystem Consortium; Robert Baker; and Curt Nonomaque's Accounting of Attorneys' Fees and Costs (Doc. 100)**

Defendants Novation, LLC, VHA Inc., University Healthsystem Consortium, Robert Baker, and Curt Nonomaque seek a total of \$54,889.55 in attorney fees and costs. The law firm of Vison & Elkins, LLP in Dallas, Texas requests \$50,711<sup>3</sup> in attorney fees, and the law firm of Husch & Eppenberger, LLC in Kansas City, Missouri requests \$4,178.55 in attorney fees and costs. Plaintiff does not oppose the reasonableness of these fees.

The court finds that these defendants have met their burden of submitting "meticulous, contemporaneous time records." *Id.* at 1250. Furthermore, the court finds that the hours claimed, the hourly rate of each attorney, and the documentation of time is reasonable. As such, the court hereby awards these defendants \$54,889.55 in attorney fees and costs.

**IT IS THEREFORE ORDERED** that Defendants US Bancorp NA, U.S. Bank National Association, Jerry A. Grundhofer, Andrew Cesare, Piper Jaffray Companies, and Andrew S. Duff's

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<sup>3</sup> By the court's calculation, the amount Vison & Elkins billed to defendants totals \$57,270.39. This discrepancy was not discussed in the affidavit of Kathleen Bone Spangler, Of Counsel attorney for Vison & Elkins. Since the amount requested is considerably lower than the amount billed, the court will use the amount requested.

Motion for Attorney Fees (Doc. 85) is denied without prejudice. Defendants shall have five (5) days from this Order to re-file their motion for attorney fees.

**IT IS FURTHER ORDERED** that Defendants Novation, LLC, VHA Inc., University Healthsystem Consortium, Robert Baker, and Curt Nonomaque's request for attorney fees is granted as set forth above. Defendants are hereby awarded \$54,889.55 in attorney fees and costs from plaintiff, to be divided as follows: \$50,711 to the law firm of Vison & Elkins, LLP in Dallas, Texas and \$4,178.55 to the law firm of Husch & Eppenberger, LLC in Kansas City, Missouri.

Dated this 7<sup>th</sup> day of August 2006, at Kansas City, Kansas.

s/ Carlos Murguia  
**CARLOS MURGUIA**  
**United States District Judge**